

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1504 of 1986

Date of decision: 9-5-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

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| 1. Whether Reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether their Lordships wish to see the fair copy of the judgment? | No |
| 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? | No |
| 5. Whether it is to be circulated to the Civil Judge? | No |

SURYAKANT M GANDHI

Versus

DARSHAN COOP HSG LSOC LTD

Appearance:

MR HM PARIKH for Petitioner

MR JITENDRA M PATEL for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:9-5-97

CAV JUDGEMENT

The petitioner, through his power of attorney

holder Madhusudan Chimanlal Shah, filed this special civil application challenging the orders annexure-A dated 24-3-1981 passed by the District Registrar, Cooperative Societies, Nadiad, and annexure-B dated 21-8-1984 passed by the Additional Registrar (Appeals), Gandhinagar.

2. The petitioner was removed from the membership of the Society. Under order annexure-A, permission as required under section 36 of the Gujarat Cooperative Societies Act, 1961 was granted by the District Registrar of Cooperative Societies, Nadiad, for removal of the petitioner from the membership of the Society. That order has been challenged by the petitioner by way of appeal, but the appeal has been dismissed.

3. Reply to the writ petition has been filed by the respondent. In para 6 of the reply, the facts have been disclosed that after removal of the petitioner, plot No.2 in question, which was originally allotted to the petitioner has been transferred and allotted jointly to Shri Virendra Pandya and Shri R. C. Desai. The aforesaid two persons later on have transferred the said plot of land in favour of one Jasbirkaur B. Bhumra in December, 1986. Since then the said plot is owned and occupied by said Jasbirkaur B. Bhumra. It has further been stated that said Jasbirkaur B. Bhumra has made construction on the said plot and she is the owner and in occupation of the said premises. It has further been stated that the petitioner is not residing in India and he became a citizen of the United State of America since long. This petition has been filed only with the object of gaining some profit out of sale of the plot, if ultimately the matter is decided in his favour. The counsel for the respondent further pointed out that at no point of time the petitioner had appeared before the Society or before the District Registrar or even before the appellate authority. The power of attorney holder of the petitioner has appeared at all stages.

4. The petitioner was allotted the plot by the Society in the year 1967 and he has not raised construction on the said plot for all these years. He has been expelled from the membership of the Society by resolution passed in the year 1980. The counsel for the petitioner, on the other hand, contended that the present case does not fall within the four corners of the provisions of section 36 of the Gujarat Cooperative Societies Act, 1961, and as such the District Registrar has committed serious illegality in granting permission to the Society for expulsion of the petitioner from its membership.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The facts stated in the reply, and referred to above, have not been disputed by the petitioner. Copy of the reply to the special civil application was given to the counsel for the petitioner on 6-1-1997, but rejoinder to the reply has not been filed and as such these facts stand uncontroverted. From the facts that at no point of time the petitioner appeared before the Society, before the District Registrar or before the Appellate Authority, as well as the fact that he has not personally filed the petition before this court, it can safely be inferred beyond doubt that the petitioner is not residing in India. In the title of the special civil application the address of the petitioner has been given as he is residing at Anand, at present in America. It is not the case of the petitioner that he has come to India and he is settled here. Another fact that has come on record is that the petitioner is possessing another house in Ahmedabad.

6. the subsequent allottees of the plot in dispute have not been impleaded as party to this special civil application. Right of those persons has been created in the plot. Not only that, the later transferee has raised construction on the plot. Any order made in favour of the petitioner will certainly adversely affect the right of those subsequent allottees, who have not been joined as party to the present petition. No order which may cause prejudice to the persons who are not before this court should be made by this court, as otherwise it will result in violation of the principles of natural justice. Further, the petitioner is residing and settled in U.S.A. and in case this petition is dismissed, it will not cause any injustice to him. The fact that the plot was allotted to the petitioner in the year 1967 and he has not utilised the same for 13 years ,i.e. upto the date of removal from membership of the Society goes to show that he was not interested in raising any construction in that plot for his own residential purpose for obvious reason. This conduct of the petitioner goes to show that he got membership of the Society and allotment of the plot only to make profit out of it. The persons in bona fide need of a house are not getting plots for the reason that persons like the petitioner get allotment of plots and reserve the plots for time to come to earn profit. Notice of the fact may be taken that in many cooperative societies plots are lying unutilised and those are plots of the persons who are not in need of the plots, but have reserved the plots for the purpose of earning profit at

the cost of bona fide persons. The discretionary jurisdiction of this Court under Article 226 of the Constitution cannot be exercised in aid of persons like the petitioner, who become members of cooperative societies only with the object of earning profit.

7. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated.

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